



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers under the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waivers

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to Par 20, Par 30 and Par 38 lamps (as specified infra) to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award.

FOR FURTHER INFORMATION CONTACT: Christine Platt-Patrick, Office of

Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE-2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, section 1605(b)(2), the head of a Federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (“nonavailability”). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redlegation Order No. 00-002.01F, dated October 31, 2012. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43-2007 requirements are not are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award, qualify for the “nonavailability” waiver determination at this time.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close

collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to ‘scout’ for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver request for the four products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP’s scouting efforts, including utilizing the solar experts employed by the Department of Energy’s National Renewable Energy Laboratory. EERE’s research efforts confirmed

the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for these items have been unsuccessful.

The specific needs of this project cannot be met by current manufacturers of LED lamps in the United States. However, because of the evolving nature of LED manufacturing, the availability of products is anticipated to increase. As such EERE has chosen to issue a project-specific waiver for the San Antonio River Walk project only. Future requests will be considered on a case-by-case basis.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on February 15, 2013, a nationwide categorical waiver of section 1605 of the Recovery Act was issued for Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43-2007 requirements to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award.. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with

respect to expenditures within the purview of his responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC on February 15, 2013.

David T. Danielson
Assistant Secretary
Energy Efficiency and Renewable Energy
U.S. Department of Energy

Editorial Note: This document was received at the Office of the Federal Register August 8, 2013.

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